STATE OF MICHIGAN

COURT OF APPEALS

ANTHONY EDWARDS,

Plaintiff-Appellant,

v

CITY OF PORT HURON,

Defendant,

and

PORT HURON HOUSING COMMISSION, d/b/a HURON VILLAGE TOWNSHOUSES,

Defendant-Appellee.

UNPUBLISHED
May 28, 2013

No. 309578
St. Clair Circuit Court
LC No. 11-001812-NO

Before: DONOFRIO, P.J., and MARKEY and OWENS, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(7) and (C)(10). We affirm.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Furthermore, a trial court's determination with regard to the applicability of the highway exception to governmental immunity is a question of law subject to de novo review on appeal. *Plunkett v Dep't of Trans*, 286 Mich App 168, 180; 779 NW2d 263 (2009).

This action arises out of injuries plaintiff sustained when he slipped and fell on an outdoor walkway within a housing development that defendant owned and operated. The precise physical location of plaintiff's fall is not in dispute. The central issue on appeal is whether the

surface on which plaintiff fell constitutes a "sidewalk . . . on the highway," for purposes of the governmental immunity act, MCL 691.1401 *et seq*.[1]

Plaintiff fell near the center of a city block that contains a series of interconnected walkways, including the walkway plaintiff was traversing. That walkway starts at the edge of a nearby public roadway and runs perpendicular to, and away from, that roadway, into the block. It runs adjacent to a parking lot, which is accessible via a nearby street. In the far corner of the parking lot is a large garage with a short ramp leading from the edge of the parking lot up into the garage. Plaintiff had been walking along the walkway in question when he fell and sustained an injury in the area where that walkway and the ramp into the garage overlap one another.

Plaintiff brought an action against defendant under the highway exception to governmental immunity alleging defects in the creation and maintenance of the walkway on which he fell. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7) and (C)(10) arguing that the highway exception to governmental immunity does not apply because plaintiff's fall occurred on a driveway as opposed to a "sidewalk." At the close of discovery, defendant filed an amended motion for summary disposition, adding a second theory to its claim of governmental immunity, which this Court will address first.

Under this second theory, defendant argues that, assuming for the sake of argument the area where plaintiff fell is characterized as part of the walkway, that walkway itself does not constitute a "sidewalk . . . on the highway" under MCL 691.1401(c), and therefore the highway exception does not apply. For his part, plaintiff argues that the walkway constitutes a sidewalk "on the highway" under MCL 691.1401(c) because it is "adjacent to the highway," citing *Duffy v Michigan Dept of Natural Resources*, 490 Mich 198, 223; 805 NW2d 399 (2011).

Under the governmental immunity act, a governmental agency is immune from tort liability if it is engaged in the exercise or discharge of a governmental function, MCL 691.1407(1), with certain exceptions. The highway exception provides, in relevant part:

> Except as otherwise provided in section 2a, [2] each governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. A person who sustains bodily injury or damage to his or her property by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency. [MCL 691.1402(1).]

The act defines the term "highway" as follows:

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[1] We note that 2012 PA 50 amended the pertinent statutory provisions at issue in this case effective March 13, 2012. We apply the statute as it existed at the time plaintiff was injured.

[2] This first phrase is deleted by 2012 PA 50. The parties do not address § 2a, MCL 691.1402a, and we assume it does not apply to this case.

> "Highway" means a public highway, road, or street that is open for public travel and includes bridges, *sidewalks*, trailways, crosswalks, and culverts on the highway. The term highway does not include alleys, trees, and utility poles. [MCL 691.1401(e) (emphasis added).][3]

The highway exception is a narrowly drawn exception to the broad grant of immunity for governmental units, and no action may be maintained under the exception unless it is clearly within the scope and meaning of the statute. *Stabley v Huron Clinton Metro Park Auth*, 228 Mich App 363, 365-366; 579 NW2d 374 (1998). In *Stabley*, the plaintiff was injured while rollerblading in a park on a paved path, which ran parallel to a nearby road in certain areas, but in other places, such as where the plaintiff fell, meandered through the wooded interior of the park. *Id.* at 364. This Court held that "[b]ecause plaintiff's fall did not occur on a pedestrian way that *ran alongside* a public roadway, plaintiff's fall did not occur on a 'sidewalk' within the meaning of MCL 691.1401(e)[.]" *Id.* at 369 (emphasis added). In *Haaksma v Grand Rapids*, 247 Mich App 44; 634 NW2d 390 (2001), this Court revisited *Stabley* in a case with facts similar to those here, again ultimately finding the highway exception inapplicable. *Id.* at 55. "Here, there is no genuine issue of material fact regarding the location of the sidewalk; it runs between, not alongside, Monroe and Ottawa Streets and is adjacent to a parking lot and 50 Monroe Place. Accordingly . . . because the sidewalk does not run alongside or adjacent to a public roadway, the highway exception does not apply[.]" *Id.*

Applying the law to the facts of this case, plaintiff's fall did not occur on a walkway that *ran alongside* a public roadway. Although the walkway here has a point of intersection with a nearby public roadway, it does not *run adjacent to* any public roadway at *any point*, let alone at the point where plaintiff fell and was injured. Instead, buildings stand between the walkway and the nearest parallel streets on either side of the walkway in this case. Furthermore, the walkway does not constitute a "sidewalk . . . on the highway" merely because it is "part of an 'interconnected sidewalk system,' parts of which may run parallel to a roadway." *Haaksma*, 247 Mich App at 55.

Plaintiff claims that the walkway is a "sidewalk . . . on the highway" because it intersects with at least one nearby public roadway, citing *Duffy*, 490 Mich at 223, in support. As noted above, however, intersecting with nearby streets is not determinative of the issue. *Duffy* says nothing to the contrary; therefore, it appears that plaintiff's reliance on it is misplaced.

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[3] 2012 PA 50 moved this definition to subsection c and amended it to read: "'Highway' means a public highway, road, or street that is open for public travel. Highway includes a bridge, sidewalk, trailway, crosswalk, or culvert on the highway. Highway does not include an alley, tree, or utility pole." MCL 691.1401(c), as amended by 2012 PA 50. The 2012 amendment also added a definition of "sidewalk"—"except as used in subdivision c" to mean "a paved public sidewalk intended for pedestrian use situated outside of and adjacent to the improved portion of a highway designed for vehicular travel." MCL 691.1401(f), as amended by 2012 PA 50.

Because the narrowly construed highway exception to governmental immunity clearly does not apply to the walkway as a whole, this Court need not address whether or not it applies to a specific subsection of that walkway under defendant's alternative theory.

We affirm.

/s/ Pat M. Donofrio
/s/ Jane E. Markey
/s/ Donald S. Owens